



BOXBOROUGH PLANNING BOARD
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John Markiewicz, Chair Eduardo Pontoriero, Clerk Nancy Fillmore Abby Reip Hongbing Tang

Meeting Minutes
August 1, 2016
7:30 PM
Morse-Hilberg Room, Town Hall, 29 Middle Road

Members Present:

John Markiewicz, Chair
Eduardo Pontoriero, Clerk
Nancy Fillmore, Member
Hongbing Tang, Member
Adam Duchesneau, Town Planner

Members Absent:

Abby Reip, Member

The Chair called the meeting to order at 7:33 PM.

Meeting Minutes of July 18, 2016

Mr. Markiewicz MADE a MOTION to approve the minutes of July 18, 2016 as amended. Ms. Fillmore SECONDED the MOTION. All members voted in favor.

Signature of Silas Taylor Farme Road (Taylor Farm Road) Definitive Subdivision Covenant

Mr. Duchesneau explained the covenant before the Planning Board had been reviewed and approved as to form by Town Counsel. He also noted the covenant needed to be signed by the Planning Board in order for the developer to move forward with the closing for the property.

Mr. Markiewicz MADE a MOTION to accept and approve the Restrictive Covenant for the Residential Subdivision Definitive Plan Silas Taylor Farme Road at Flagg Hill Road. Ms. Fillmore SECONDED the MOTION. All members voted in favor.

1102 Massachusetts Avenue ANR Plan

Mr. Duchesneau provided a brief overview of which lot lines would be changing on the Approval Not Required (ANR) Plan.

Mr. Markiewicz MADE a MOTION to endorse the 1102 Massachusetts Avenue ANR Plan and to authorize the Planning Board Chair, the Planning Board Clerk, or the Town Planner to sign the plan on behalf of the Planning Board. Ms. Fillmore SECONDED the MOTION. All members voted in favor.

Correspondence

Mr. Duchesneau indicated he had distributed some decibel level readings which Larry White of 71 Sara's Way had submitted for review by the Planning Board. Mr. Duchesneau recommended these materials be discussed as part of the upcoming continued public hearing for the 1034 and 1102 Massachusetts Avenue Site Plan Approval application and the Planning Board agreed.

1034 & 1102 Massachusetts Avenue (Lawn Barber, Inc.) – Site Plan Approval Application – Applicant Phaneuf RT (Lawn Barber, Inc.) seeks approval to allow the erection of a free standing hoop house structure, relocation of parking spaces, repositioning of landscape and masonry materials and other storage, and other site improvements

Mr. Markiewicz reopened the public hearing at 7:46 PM. Attorney Alex Parra and Richard Harrington from Stamski and McNary, Inc. were in attendance to discuss the application with the Planning Board. Mr. Harrington presented and provided an overview of the new Site Plan which had been brought to the meeting. He noted a handicap parking space had been provided and the plan called for a proposed wall/fence to demark the 50 foot front yard setback along the right (east) side of the driveway. Mr. Harrington continued on to discuss stormwater flow at the property noting a rain garden and rip rap were proposed in an area between the western property boundary of 1034 Massachusetts Avenue and the parking area on 1102 Massachusetts Avenue. He also called out the shrubs and boulders which were being proposed to outline the nine (9) space parking area on the property at 1102 Massachusetts Avenue.

Mr. Harrington then discussed the proposed siltation collection area at the rear of the property at 1034 Massachusetts Avenue. Jersey barriers would be situated to collect sediment up to one foot in depth. Mr. Markiewicz asked if the Applicant's engineer had used this siltation collection method in other locations. Mr. Harrington stated they had not used this method before, but they felt this would be the best solution. He added they were also open to other ideas and suggestions on the matter. Ms. Fillmore asked if the perforated pipe which is part of this collection system could become filled with sediment. Mr. Harrington stated the pipe could be cleaned out periodically and it would be the owner's responsibility to undertake this task.

Larry White of 71 Sara's Way noted in his opinion it appeared a portion of the stone pile at the rear of 1034 Massachusetts Avenue was actually located on the property at 1120 Massachusetts Avenue and it also seemed that runoff from the Lawn Barber, Inc. property drained here as well. Larry White then indicated the shed at the rear of the 1034 Massachusetts Avenue property appeared to be located on the abutting property as well and he did not agree with what was portrayed on the surveyed plan. He asked if the presented Site Plan was suggesting the Applicant would be moving these items further onto the property at 1034 Massachusetts Avenue. Mr. Markiewicz asked the project team if the stone pile was located on the abutting property and Mr. Harrington stated it appeared that way based upon their survey data. Mr. Markiewicz asked if Lawn Barber, Inc. was prepared to move this portion of the stone pile off of the neighboring property. Mr. Harrington stated they were comfortable with this request and a wall could also be extended along the rear property line to prevent further intrusions.

Ms. Tang thanked the project team for their efforts to address the Planning Board's concerns regarding stormwater management. She also noted most of the nine space parking area along Route 111/Massachusetts Avenue appeared to be located in the 100 foot buffer to the pond and

any land disturbances in this area would seem to need approval from the Conservation Commission. Larry White stated he has asked for a determination from the Building Inspector regarding the parking spaces along Route 111/Massachusetts Avenue and is awaiting a response. He also stated he felt the 100 foot buffer area to the wetlands on the north side of Route 111/Massachusetts Avenue would encompass some of the parking area on 1102 Massachusetts Avenue as well. Larry White felt these wetlands and their buffer area should be shown on the Site Plan as well.

Mr. Markiewicz asked when a Site Plan stamped by a registered land surveyor would be submitted to the Planning Board. Mr. Harrington stated a stamped plan could be produced within a week or so, but the project team is still making changes to the existing Site Plan. Larry White claimed he had his property and the property at 1034 Massachusetts Avenue surveyed in the past by R. Wilson & Associates, Inc., but the survey stakes had since been removed by someone. Mr. Pontoriero stated it was unclear how the proposed sediment collection area at the rear of 1034 Massachusetts Avenue would work exactly. He requested the Town's Consulting Engineer review this proposed system and provide an opinion to the Planning Board on how well it would function.

Mr. Duchesneau then began to go through the revised list of proposed conditions for the Site Plan Approval. Mr. Parra stated he would prefer, for those conditions which listed a timeframe for meeting a requirement, that the condition indicate if the Applicant/Owner had shown best efforts to comply with the request in the specified timeframe but could not, the Planning Board shall grant a time extension. Mr. Pontoriero stated he felt the wording of the conditions as they related to this item should remain as proposed by the Town Planner. Mr. Markiewicz agreed.

Larry White raised issue with proposed Condition #7 regarding the regulation of noise generated at the subject property as it pertains to 310 CMR 7.00. He stated he had investigated this matter and there are many provisions which pertain to the regulation of sound; not just this one section of CMR. Larry White indicated it was also his understanding that local ordinances or bylaws are not allowed to be less stringent than state or federal ordinances. Larry White requested the language "including all state and federal ordinances governing noise" be added to the condition. Mr. Parra stated the project team was comfortable with this additional language so long as the word "applicable" was added before "state and federal." There was then a discussion regarding what may or may not be allowed under CMR regulations.

Mr. Parra raised issue with proposed Condition #9 stating he believed it was still being sorted out as to which level of sound is applicable in which particular location as indicated in Section 6404(1) of the Zoning Bylaw. He continued on to indicate he did not feel this condition is necessary as part of the Site Plan Approval because the sound test submitted for the subject property by the Applicant in the fall of 2015 showed compliance with the Zoning Bylaw. Mr. Markiewicz stated the Planning Board is pulling together a set of conditions, which if the Applicant can comply with, they would be able to obtain Site Plan Approval. He noted there are courses of action which could then be taken subsequent to the Planning Board's action on the application. Larry White stated he had submitted decibel readings earlier in the day to the Planning Board which he had collected using an iPhone application. He also had issue with the Applicant being allowed to self-monitor the sound study in the fall of 2015.

Cynthia Pockalry of 71 Sara's Way asked for clarification on Condition #10 in terms of the hours of operation and enforcement of the condition. Mr. Duchesneau indicated these hours of operation would be enforced by the Building Inspector and when he was not on duty they would be enforced by the Boxborough Police Department. Mr. Duchesneau also stated the operations which would be regulated by this condition would be those which related to the cutting of stone (cutting, splitting, delivery, relocation, and reorganization of stone, stone products, and storage containers/areas, and similar activities) and generate substantial noise.

Mr. Markiewicz asked if the Town's Consulting Engineer could examine whether or not the slurry wastewater holding tanks were adequate to handle the volume of activity occurring at the property. He wanted to know if there was some unit of measurement which could be used to determine how frequently the tanks should be cleaned out. Ms. Tang asked how the tanks are cleaned out in harsh weather conditions, such as during the winter. Mr. Markiewicz added the cleanout of the sediment collection area needs to consider the same question as well.

Mr. Parra raised issue with Condition #13 which prohibited the repair of any vehicles at the subject property. He noted the Applicant would prefer to have the ability to conduct repairs to their vehicles on the property. Mr. Markiewicz stated the Planning Board was concerned about vehicle repairs which may be damaging to the environment and they did not want the Applicant to bring vehicles to the site to be repaired. Ms. Fillmore stated she was familiar with auto repairs and noted some repairs do need to be made immediately on-site. Mr. Duchesneau requested the project team draft a new proposed condition for this particular item.

Mr. Parra then stated his concerns regarding proposed Condition #21 which spoke to the removal of the donation bins in the parking area along Route 111/Massachusetts Avenue. He indicated these bins are under the control of the neighbor, Robert Smith, and wanted to know if the Planning Board would consider an alternative to simply removing them. Mr. Pontoriero stated he felt the bins should be removed in their entirety as there is no reasonable representation as to why they should be there. Mark White of 93 Sara's Way indicated he believed it was not allowed to have bins for rent in the front yard setback area.

Mark White then asked what the wording "similar activities" meant in proposed Condition #10 and felt the words "which make noise" should be added for clarification. He also asked how this particular condition would be enforced; noting he and other neighbors did not want to have to call the police every day. He added he felt this entire process had been very confrontational. Mark White asked what action would be taken if the Applicant/Owner was found to be out of compliance with Condition #10. Would there be a \$100.00 fine or would the Applicant/Owner be given 30 days to comply with the Zoning Bylaw? He also asked how long could the \$100.00 fines continue to be issued. Mark White requested the Applicant provide screening at the edges of the subject property, install sound insulation measures in the hoop house building, and/or relocate the garage door to the other end of the hoop house building, as these are the actions which will reduce the potential for this type of problem arising in the future.

Mr. Markiewicz indicated the Building Inspector is looking into some of the issues pertaining to the adequacy of the hoop house building. Mark White asked about having the garage door face

the opposite direction and Mr. Markiewicz noted this may not be possible. Mark White suggested the fact that the building is already erected is now allowing the Planning Board to cut the Applicant slack with regard to their application. He felt the hoop house building would not have been allowed if the Applicant had asked for its approval prior to erecting the building. Mr. Markiewicz stated the Planning Board has asked both parties to look into addressing the issues at hand. Mark White stated he felt the relocation of the garage door would not be an issue if there were sound insulation measures in place inside the building. He questioned how long it takes to unload and load material, in and out of the building, while the garage door is raised, noting he felt it was an on-going process throughout each day. Mark White stated he did not want the Applicant bringing outside vehicles to the property and conducting repairs on them at the site. Mr. Duchesneau indicated the most updated Site Plan would be distributed to the Conservation Commission for review and comment.

Mark White asked what could be done in terms of screening at the rear of the subject property. Mr. Markiewicz indicated the Planning Board has asked the Applicant to look into a number of items for the Site Plan, including screening at the boundaries of the property. Mark White cited Section 8007(6) of the Zoning Bylaw which says "adequate buffers shall be provided to protect abutting properties from lighting, sight, sound, dust, and vibration." He also stated he felt the issue of traffic had not been discussed and no one is contemplating the trucks going to and from the subject property.

Larry White invited the Planning Board members to his property to hear what it sounds like on a day to day basis from his home. He also provided the Planning Board members with his phone number to be able to contact him. Larry White stated he felt that had these proceedings occurred prior to the hoop house building being erected, some of the abutters' concerns would be considered by the Planning Board. Larry White felt the Applicant should be required to take down the hoop house building and start the process all over again from the beginning. He indicated that to his knowledge the hoop house building had been constructed in one day. Mr. Markiewicz stated the Planning Board would request the Applicant to relocate the garage door to the other side of the hoop house building.

Larry White stated the Applicant continuously throws rocks into the metal buckets of their front loader and Bobcat which causes a significant amount of noise throughout the day. He suggested the Applicant be required to use rubber mats or plywood in the buckets to help reduce the amount of noise which is generated when the rocks are being relocated around the property. Larry White asked if the rights of the Site Plan Approval permit, if awarded, could be transferred to another property owner or business. Mr. Duchesneau noted he would look into this question further. Ms. Pockalry asked if the parking of vehicles overnight would be allowed in the parking area along Route 111/Massachusetts Avenue. Mr. Pontoriero asked the Applicant to provide rationale for why any vehicle should be allowed to park overnight in the parking area along Route 111/Massachusetts Avenue.

Lonnie Weil of 350 Burroughs Road commended the Planning Board on how polite they have been and stated how he knew they wanted to conduct this process to reach a reasonable decision. However, Mr. Weil indicated he was concerned about the precedent he felt the process was setting. Mr. Weil noted he felt if the process had been done properly, the hoop house building

would likely have not been erected. Mr. Markiewicz stated if no positive steps towards compliance had been taken by the Applicant, their operation would have been shut down. However, the Applicant has hired a number of consultants who are working to address the issues at the subject property and they are trying to work with the Planning Board and the Town to remedy the situation. Mr. Weil indicated he understood what Mr. Markiewicz was saying, however, he felt the situation was not being addressed in the most appropriate manner. Mr. Markiewicz noted the adequacy of the hoop house building is being address by the Building Inspector. Jim Moineau of 93 Joseph Road indicated the process has been very uncomfortable.

Mr. Weil stated he understood the difficulties the Planning Board is facing, but he felt the Lawn Barber, Inc. business operation was set up with premeditated actions. He continued on to note he felt the Applicant was ruthless. Ms. Pockalry stated she appreciated what the Planning Board has indicated and she understood the Applicant is working to address the issues at the property, but she did not feel the Applicant was working to address the concerns of the abutters. She noted she and her neighbors deal with the sound from the business every single day, which includes screaming, yelling, and booming. Ms. Pockalry felt the Applicant was simply not working with the abutters in any fashion.

Mr. Markiewicz noted the Planning Board is just one entity the Applicant will need to obtain the necessary approvals from, but there are other Boards and Committees which will need to sign off for the Applicant to achieve full compliance. Mr. Weil stated he felt the Applicant will do what they want to do until they are forced to not do something. He felt the Planning Board should take into consideration the Applicant's modus operandi. Ms. Fillmore asked Mr. Weil if he had seen trucks going to and from the subject property. Mr. Weil indicated he was only making his comments based upon what the Applicant has already stated. Larry White requested the Planning Board require the Applicant to erect a highway sound barrier to screen the subject property from the residences on Sara's Way or he would fight the matter until the cows came home. He continued on to state he felt it was within the Planning Board's ability to require screening of the business to protect the abutters. Mr. Markiewicz requested the Applicant examine if there is a way the garage door on the hoop house building can be moved to another side of the building and if there is anything which can be done on the subject property to minimize the noise which is being emitted.

Mr. Markiewicz MADE a MOTION to continue the public hearing to the Planning Board's meeting on Monday, August 29, 2016 at 7:45 PM. Ms. Fillmore SECONDED the MOTION. All members voted in favor.

With no further business, the meeting was adjourned at 9:33 PM on a MOTION by Mr. Markiewicz, SECONDED by Ms. Fillmore, with all members voting in favor.

On Behalf of the Boxborough Planning Board:



Eduardo Pontoriero, Clerk